

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**OA No.2036/2004**

New Delhi: this the 14<sup>th</sup> day of December, 2006

**Hon'ble Mr. Justice M.A.Khan, Vice-Chairman (J)  
Hon'ble Mr.V.K. Agnihotri, Member (A)**

K.P. Suman,  
Officer Superintendent Gr.II,  
Rail Coach Factory (Kapurthala),  
Tilak Marg, New Delhi.

...Applicant.

(By Advocate: Shri B.S.Maine)

Versus

1. General Manager (P),  
Northern Railway,  
Baroda House, New Delhi.
2. Dy. Chief Controller of Stores,  
Northern Railway,  
Shakurbasti, Delhi.
3. General Manager (P),  
Rail Coach Factory (Kapurthala),  
Tilak Marg, New Delhi.

... Respondents.

(By Advocate: Shri Satpal proxy for Shri V.S.R.Krishna)

**ORDER**

**By Mr. Justice M.A. Khan, VC(J):**

The applicant has filed the present OA for quashing the order dated 16.9.2003 whereby his representation for fixing the proper seniority in the grade of OS-II in Rail Coach Factory (RCF), Kapurthala was rejected. He also seeks a direction that he should be granted benefit of the order of this Tribunal dated 16.12.1997 in OA 1614/92 and should be assigned a seniority position in the grade of OS-II above his juniors, who have been promoted to this grade or the grade of OS-I subsequently from the panel prepared by Respondent No.2, Northern Railway. It is also prayed that after revival of the seniority of the applicant in OS Grade-II, RCF respondent No.3 should be directed to grant him all consequential benefits, such as, further promotion, seniority and pay and allowances etc. Lastly, the applicant has prayed for Rs. 50,000/- as compensation.

2. Background of the case is as follows:

The applicant, who belongs to SC community, joined Northern Railway (Administration) as LDC on 22.11.1975. In due course, he was promoted to the post of Head Clerk in 1982. Meanwhile Railway Coach Factory, Kapurthala was established in the year 1985 and the temporary posts, sanctioned for the Project therein were decided to be filled up from amongst the existing staff of the Zonal Railways. The applicant was transferred to RCF Respondent No.3 vide order dated 26.12.1986 to the post of OS Grade-II in the pay scale of Rs.1600-2660 on deputation basis. During this period Northern Railway initiated selection of Head Clerks to fill up, post of OS Grade-II. The applicant was allowed to participate in it. On closure of cadre in RCF after screening test the staff found suitable to be retained, was absorbed by RCF respondent no.3 in substantive grade as on the date of closure of the cadre on 31.3.1990. The options of the lateral entrants were taken from the employees for their permanent absorption in respondent no.3's office w.e.f. 1.4.1990 as prior to the closure of cadre, all posts of the Rail Coach Factory were work-charged and the lien of the staff, who joined RCF from other Railways Units, was maintained by their parent Units. The applicant submitted his option dated 22.3.1991 for his permanent absorption in the RCF accepting all these conditions. After submission of his option, the applicant was screened by a screening committee and found suitable to be absorbed in RCF w.e.f. 01.04.1990 in his substantive grade of Head Clerk after closure of the cadre. Accordingly, he was assigned seniority position in the RCF as per instructions of the Railway Board. The grievance of the applicant is that while he was working on deputation in RCF, his parent Department, Northern Railway processed the case of Head Clerks for their promotion to the post of OS Grade-II in which the applicant participated and also qualified. But the applicant has not been promoted along with his juniors in the cadre of Head Clerk in the Northern Railway and on that basis proper promotion has not been granted to him to the post of OS-II in RCF. He has further contended that he had filed OA 1614/92, which was allowed by the Tribunal on 16.12.97 (Annexure A/3) with the following order:

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"6. In the result the OA succeeds and is allowed to this ~~that~~ the impugned order dated 15.6.91 is quashed and set aside and applicant will be deemed to have qualified for empanelment as OS Grade II against one of the SC vacancies, he having admittedly cleared the impugned selection by relaxed standards, if he is otherwise eligible. No costs."

Although the applicant thereafter has been shown in the list of qualified persons, yet he has not been given actual promotion in RCF as a consequence of qualifying the said test.

3. It is also pleaded by the applicant that this Tribunal, while passing the order dated 16.12.97 in OA 1614/92, was conscious of the fact that the applicant's lien in Northern Railway, on account of his permanent absorption in the RCF, stood terminated w.e.f. 01.4.1990. The Tribunal had quashed and set aside the order dated 15.6.1991 passed by the Northern Railway, by virtue of which the applicant was declared in-eligible for promotion to the grade of OS Grade-II. The Northern Railway included the name of the applicant in the panel of OS Grade-II by order dated 06.06.1998. His name was shown at Sl. No.3, below Shri Balbir Singh (SC) Head Clerk (now OS Grade-I).

4. According to the applicant, the RCF has promoted 7 Head Clerks to the posts of OS Grade-II on regular basis w.e.f. 1.3.1993 vide their office order dated 24.8.1993, who all are junior to the applicant. On the other hand, though the applicant was working in RCF on the same posts of OS Grade-II on ad hoc basis w.e.f. 8.5.1987, he has been promoted to the post of OS Grade-II on regular basis w.e.f. 28.8.1993. Applicant's representation in this regard to the respondents has not borne any fruit. Hence this OA.

5. The respondents in their counter reply have submitted that the applicant was himself responsible for non-promotion along with his juniors to the post of OS Grade-II in Northern Railway. It is submitted that after closer of the cadre on 31.3.90, all those employees, who were appointed on regular basis, were permanently absorbed in RCF w.e.f. 1.4.1990, when the selection was being initiated for the post of OS Grade-II the applicant along with others was called to

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appear in the selection. The candidates, who qualified the selection were, vide Notification dated 14.5.92, were promoted. The applicant filed OA 1489/92 before this Tribunal, which was dismissed on 27.1.1998 (Annexure R-3). The applicant was later promoted as OS Grade-II from the post of Head Clerk vide order dated 24.8.1993 in accordance with Railway Board's Instructions dated 27.1.1993. The respondents have explained that since the applicant had not appeared in the selection held on 1992 though he was specifically called upon to participate in the selection, he cannot complain that his juniors have been promoted ignoring his claim. It is further submitted that the controversy raised has already been settled by the Chandigarh Bench of this Tribunal on 13.3.2002 in OA 1091/PB/96 in the case of **Sukked Singh vs. Union of India & Ors.**, which has been affirmed by Hon'ble High Court of Punjab and Haryana at Chandigarh. Other allegations made in the OA were controverted and rejection of his representation was justified.

6. In the rejoinder, the applicant has reiterated his own case.

7. We have heard the parties and perused the pleadings.

8. Before embarking upon the adjudication of the question raised, it will be pertinent to notice a few facts, which are crucial. The applicant was working as Head Clerk in Northern Railway since 1982. On 26.12.86, he was transferred to newly established RCF on deputation basis. In the meantime, Northern Railway parent department of the applicant, held a selection, written test and the interview for promotion of Head Clerk to the post of OS Grade-II vide letter dated 8.8.1989. The applicant opted for and was permanently absorbed in the post of Head Clerk in RCF w.e.f. 01.4.1990. His lien to the post of Head Clerk in Northern Railway came to an end w.e.f. 01.04.1990. Northern Railway issued result of the aforesaid selection on 15.6.1991 in which name of the applicant was not mentioned along with the persons who were included in the panel of OS Grade-II. The applicant challenged it in OA 1614/92. The Tribunal disposed off that OA by order dated 16.12.1997, which has been reproduced in the forgoing paragraph. As a consequence, the name of the applicant was included in the

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panel. The panel for promotion was issued in the year 1992 when the applicant was not in the establishment of Northern Railway and his lien to the post of Head Clerk had already stood terminated w.e.f. 1.4.1990.

9. During the course of hearing, the main plank of the argument of the applicant is that RCF which had permanently absorbed him in the post of Head Clerk w.e.f. 1.4.1990 ought to have granted promotion to the post of OS Grade-II on the basis of result of the selection held in Northern Railway Zone after his name was directed to be included in the panel under order of this Tribunal dated 16.12.97 in OA 1614/92. His second contention is that he was absorbed w.e.f. 1.4.1990 retrospectively by order dated 11.8.92, which was improper and, according to him, the applicant remained in the establishment of Northern Railway till 11.8.92 and he should have been granted the benefit of selection which was held in 1989.

10. It will be pertinent to mention here that OA 1614/92 was filed by the applicant against the order of the authority of Northern Railway dated 15.6.91 whereby his representation for placing him in the panel for the post of OS Grade-II was rejected. The applicant retained lien in the Northern Railway till he was permanently absorbed in RCF w.e.f. 1.4.1990. Before that period he was allowed to participate in the selection process, which was consisting of written test and interview. ~~The~~ The applicant's lien was in Northern Railway and he was eligible for consideration for promotion as per rules. The applicant along with other candidates cleared the written test and only two candidates were selected in the interview, which included one General category and one SC category candidate. In the counter reply to the OA No.1614/92, the defence of the respondents (Northern Railway) was that one of the two candidates who was selected was SC candidate and they could not consume more than 50% reservation quota in the selection so the applicant could not be placed in the panel. The Tribunal found that the principle of law laid down by the Hon'ble Supreme Court in the case of Kaveri Private Limited vs. Shivnath Shroff & others 1996 1 SC 699 was not properly appreciated and further that there were more

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than one vacancies available for promotion of SC candidate so the applicant, having cleared the selection as per the relaxed standards, "if he is otherwise eligible" shall be empanelled. The order of the Tribunal dated 16.12.1997 made in OA 1614/92, as such, was that non inclusion of the name of the applicant, as SC candidate, on the ground that no SC vacancy was available was wrong and it was directed that the applicant's name should be included in the panel of qualified eligible candidate who belonged to SC category. The order explicitly or impliedly did not direct the Northern Railway that applicant would also be promoted de hors the rules. The name of the applicant as such was included in the panel by order dated 16.12.97. But it did not give indefeasible right to the applicant to claim actual promotion on the basis of this empanelment from a date prior to 1.4.1990 when his lien was terminated on the post of Head Clerk in Northern Railway specifically when none of his junior in that cadre had been promoted prior to 1.4.1990.

11. Admittedly, none of the persons, who were in the panel in which name of the applicant was added by virtue of order dated 16.12.1997 in OA 1416/92 was promoted to the post of OS Grade-II from the date prior to 1.4.1990. All of them have been promoted to the post of OS Grade-II in Northern Railway after the applicant has been permanently absorbed in RCF w.e.f. 1.4.90.

12. It will also be pertinent to notice that RCF was not a party to the order dated 16.12.97 made in OA 1614/92. Furthermore, there was no direction to RCF to grant promotion to the applicant on the basis of the select panel prepared in Northern Railway. The applicant opted for and was absorbed as Head Clerk in RCF w.e.f. 1990 and was later on promoted in the RCF to the post of OS Grade-II. The contention of the applicant is that he could not be absorbed in RCF with retrospective effect. To our view, it is without any merit, the applicant himself had opted for absorption in RCF w.e.f. 1.4.1990. He could not have retained on the post of Head Clerk in Northern Railway after 31.3.1990. It is well settled that an employee cannot have lien on two posts at the same time. After the permanent absorption of the applicant in RCF in parent department Northern Railway could

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not legally retain his lien in its establishment on and after 1.4.1990. Issuance of order to that effect subsequently in 11.8.92 is valid. The applicant as such did not born in the cadre of Head Clerk of Northern Railway on the date on which date the selection panel of selected person was given effect to i.e. panelists were promoted in Northern Railway.

13. It is improper for the applicant to ask for the RCF to promote him and grant benefit of the selected penal prepared in Northern Railway. Both Northern Railway and RCF have independent entity and separate seniority departments/unit and the employees of the Northern Railway and RCF are governed by different sets of service rules. They did not have combined seniority nor do they have a common promotional post. After the applicant's absorption in RCF his further progression in the cadre of promotional posts in RCF will be regulated by the service rules applicable to the RCF employees. He cannot be relegated back to the post when he was holding lien to the position of Head Clerk in Northern Railway and granted the same benefits which his junior has received after he was permanently absorbed in RCF.

14. As a result, we do not find that by virtue of the order dated 16.12.97 made in OA 1614/92, the applicant cannot be granted actual<sup>a</sup> promotion to the post of OS Grade-II in Northern Railway or in RCF from the date prior of his absorption i.e. 1.4.1990<sup>or after this date</sup> on the ground that some of his juniors whose name appear in the panel have received promotion to the higher post<sup>in</sup> Northern Railway. In view of above discussion, the OA has no merit. It is dismissed. No costs.

  
(V.K. Agnihotri)  
Member (A)

  
(M.A. Khan)  
Vice-Chairman (J)

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